

EXAMPLE DETAILED ADVICE

I wanted to have a loft conversion so got a few quotes from builders as to the cost. One builder telephoned me and said that he would charge £18,000, which was less than the others, and said he was not VAT registered so I would save further money. He said he would take care of everything, including the electrics. He said he would need £5,000 up front for materials, which I agreed. We also agreed that I would make stage payments as the work progressed and that once started, it would take 6 weeks to complete. I told him that it must not take more than 6 weeks to complete as my daughter was coming home from university and I needed the room completed for her.

When the work started, I was surprised to note that the builders were walking up and down the stairs in their boots, and made the carpet very dirty. I complained and they put down some covering which made it a lot better. The first stage was to take off some of the tiles on the roof, and these were placed on the lawn in the front garden. As they removed further aspects of the roof, they put more rubble on the garden. I asked the builder to move it, and he said it was up to me to arrange to have it taken away - I said I thought he would use a skip, or take it away himself but he says that that was not in the price.

He then told me that, after removing some of the felt and tiles, the joists were rotten in places and needed changing and this would be an extra cost. He showed me the joists and I agreed to have them changed.

After 1 week, he asked for a further £5,000 - I mentioned the stage payments and he said that it should be paid as he had been there for the week and had to pay his labourers - I did not want to pay it but was concerned that he would slow down the work so reluctantly agreed.

By the end of the fourth week, the work seemed to be progressing very well, and a new staircase was fitted, so I managed to inspect the work. It seemed OK to me.

However, the builder did not then return for 2 weeks - I kept calling him but he did not answer his phone. When he finally returned he said he had been on holiday. My daughter was back by then so I had to pay for her to stay in a hotel until the work was finished.

At the end of the eighth week, the builder asked me for another £5000, saying this was to cover the joists - I could not believe that they cost so much to purchase or fit, so I asked for his invoice from the roofing company, which he refused. He also said that as they were almost finished, he wanted the remainder of the payment as well. I said that there was still a lot to do with the plastering and painting, and fitting of the radiators. He then said that these would be extra costs as he had not allowed for these within his price. These were on the original specification so I thought they would be included but he is adamant that they are not. He says he will charge a further £8,000 for these works, which would then make him more expensive than the other builders who had provided quotes. He said that if I did not pay him he would take out the stairs and windows that he had put in as they were his and that he would sue me for damages. He was getting really aggressive and I was very frightened so I had no choice to pay him for the work he had done to date and paid him. I felt ripped off so asked him not to carry out the plastering etc, and had another builder do this for £4,000. When he came to do this, he found lots of mistakes, such as boarding not being fitted into

place, the ceiling is not fitting properly, the windows supplied do not open and there are loads of other faults.

I am really angry and feel ripped off by this builder but don't know if I can do anything about it.

ANSWER

A contract, and the terms of the contract, do not have to be in writing to be binding. Where the parties have agreed terms verbally, and there is a difference of opinion, if the matter went to Court a Judge would listen to both sides, and take account of any other evidence, and can decide whose evidence he/she prefers on a balance of probabilities.

There does not appear to be any dispute about the fact that the contract price was £18,000, only what it covered. In this instance, in your favour, is the fact that you had sent out specifications to the builders to say what you wanted, and any quote provided should have been based on those specifications. Anything excluded should have been brought to your attention. However, it will still be a case of your word against that of the builder if he denies that he said he would "take care of everything". If the Judge accepts that he did say that, then it would be highly probable that it would follow that the remaining works were included. In that case, you can claim the cost of the additional builder.

In regards to the carpet, the builder must carry out all aspects of this work with reasonable care and skill - this would include preparation. As he did not, you would be able to claim the cost of the cleaning.

In regards to the skips, this will depend on whether this was included in the specification. If it was not, there is no implied term that the rubbish will be removed from site.

Reasonable care and skill also has to be used in regards to pricing for works, and once a quote is given, only those extra works that could not have been foreseen (or that you ask for) should be charged. Where no price has been agreed for additional works, then the builder can only charge a reasonable charge for changing the joists and, on the basis of the cost of the total works, it seems the charges are very excessive. You may well have been able to challenge this however, as you have made payment, it will be hard to do so now. It is possible for you to claim that you paid "under duress" - this means that payment was made due to fear, but this is a very hard argument to bring and you would have to convince the court that you really feared that he was going to cause you injury at that point.

Whether you can claim for the cost of the accommodation for your daughter will depend on the exact facts. As you had stated that you needed the conversion done by a set time and why, it is reasonably foreseeable that you may have to pay for hotel accommodation if it was not completed (if for example, you had a 2 bedroom house and the 2nd room had been used for the new stairs). This is because "time was of the essence" of the contract, and the builder knew that. However, if the 6 week period lapsed, and you did not say anything to the builder, then you may well have waived any breach of contract by him and would not be able to claim the costs. There is not enough information submitted for me to be able to advise you further in regards to that aspect.

In regards to the faults, what you can do about this will again depend on how the relationship ended, and how frightened you were when the builder became aggressive. Usually, if there are faults, you would ask the builder back to put them right within a reasonable period of time. If you feel that you could not have him back, then you should obtain quotes for the cost of putting all of the issues right and then ask him for payment. If he refuses, you may have to consider legal proceedings. You would, in this instance, have to convince the judge as to why you would not have the builder back to rectify the work.

The Consumer Rights Act 2015 Act includes new statutory remedies which will allow you, if you have received a substandard service to be able to demand that those services are repeated at no additional cost to you or to get a price reduction.

You have not stated how you paid - if you paid anything to the builder on a credit card then any claim you have against the builder you can also bring against your card provider under Section 75 of the Consumer Credit Act 1974 which makes the card provider jointly and severally liable for breach of contract - this means you can pursue the card provider, the builder, or both. The amount you can claim will be all losses claimed from the builder for the breach of contract, and is not limited to the amount you paid on your card.

Before issuing proceedings you would need to write a formal pre-action letter to the builder (and credit card company) following the civil court pre-action protocol.

For information purposes, also to bear in mind is that under the new Consumer Rights Act 2015, if in this case any written information had been provided at the time, then the CRA states that any pre-contract information in relation to a service that is given to a consumer, if it can be shown that the consumer then went ahead and actually relied on that information, when entering into the contract, then the service which is later provided must comply with that information.

With regard to the aggressive behaviour I would also refer the matter to your local Trading Standards department as there may be a breach of the **CONSUMER PROTECTION UNFAIR TRADING (AMENDMENT) REGS 2014**

These came into force in **October 2014** and gives you the right to get your money back if you are misled or intimidated when buying – or signing a contract for – goods or services.

If you are a victim of a misled or aggressive sales practice, then you can demand either:

- 1) A full refund if you act **within 90 days**; or
- 2) A discount on the price

These Regulations fill the gap in consumer protection left by the **Consumer Protection from Unfair Trading Regulations 2008**, which made it a criminal offence for traders to misled or intimidate consumers, but did not give consumers any civil rights of redress. You now have that right of redress.

